

STATE OF CALIFORNIA

MEMO



To : BOARD DEVELOPMENT COMMITTEE
DAVID LIZÁRRAGA, CHAIR
VACANT, MEMBER

Date: February 23, 2018

From : TIMOTHY M. CORCORAN
ROBIN PARKER
DANIELLE R. VARE

Subject: BOARD MEMBER EDUCATION CONCERNING CHANGES TO THE
ADMINISTRATIVE PROCEDURE ACT, BAGLEY-KEENE OPEN MEETING
ACT, POLITICAL REFORM ACT, AND PUBLIC RECORDS ACT

Attached are detailed summaries of the Administrative Procedure Act and Bagley-Keene Open Meeting Act prepared by Robin, and of the Political Reform Act and Public Records Act prepared by Danielle. A brief summary of the Acts are as follows:

Administrative Procedure Act¹

The Administrative Procedure Act ("APA"), Government Code section 11340, et seq., is the basic law controlling administrative agencies in California. The APA consists of three chapters of the Government Code. Chapter 3.5 (Gov. Code §§ 11340-11361), establishes the Office of Administrative Law and sets forth the law covering the quasi-legislative function of administrative agencies, i.e., the promulgation of regulations. When the Board elects to amend, adopt, or repeal regulations, it does so in compliance with Chapter 3.5. Chapter 4.5 (Gov. Code §§ 11400-11475.70), applies to any adjudicative proceeding required to be conducted under Chapter 5 (Gov. Code §§ 11500-11529). These statutes are the basic authority or "rules of procedure" governing administrative quasi-judicial proceedings. They govern administrative hearing procedures unless the statutes relating to a specific agency's proceedings provide otherwise. (Gov. Code §§ 11410.50, 11415.10, and 11415.20)

The Board's specific authority to conduct administrative hearings is found in statute, Vehicle Code section 3000, et seq., and in regulation, Title 13, California Code of Regulations ("Title 13"), section 550, et seq. Specific Board procedures set forth with particularity in the Vehicle Code and Title 13 are controlling over the APA. Also, Vehicle Code sections 3066(a), 3080(a), and 3085.2(a) expressly incorporate Government Code sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517 into Board procedures for hearings on protests only. No provisions in the Vehicle Code or

¹ There were no substantive changes to the APA summary nor were there any decisions impacting the Board's quasi-judicial functions. Subdivision (f) of Section 11529, which pertains to the Medical Quality Hearing Panel, was amended to add a petition to revoke probation.

Title 13 exempt the Board from the APA. Any provisions of the APA not in conflict or inconsistent would supplement the Vehicle Code and Title 13 sections. To the extent it is subject to the APA, the Board is in compliance with all applicable provisions.

The Bagley-Keene Open Meeting Act²

The Bagley-Keene Open Meeting Act (“Act”), at Government Code section 11120 -11132, is one of the “sunshine laws” that ensures citizens have knowledge of the activities and workings of government. A democratic government assumes that those who elect public officials will have free access to what those public officials are doing. Access to government meetings and records provides citizens with the information they need to participate in the democratic process and to insist that government officials are held accountable for their actions. The best way to emphasize the intent of open meeting laws is to set forth the first section of the Act as follows:

- ❖ It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.
- ❖ In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.
- ❖ The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. (Gov. Code § 11120)

The Political Reform Act³

The Political Reform Act (“PRA”), Government Code section 81000, et seq., is the basic ethics law in California. Although a significant focus of the PRA is on campaign financing and election committees, the main purpose of the PRA, in relation to the Board’s operations, is to ensure that Board decisions are made fairly without regard to who is affected by those decisions. The PRA provides that Board members and staff are required to publicly disclose their financial interests in entities specified in the Board’s conflict of interest regulation (Form 700 or Statement of Economic Interests) and to refrain from participating in decisions in which there is such an interest.

² There were no statutory changes or decisions impacting the meetings the Board holds.

³ There were no statutory changes or decisions impacting the Board’s compliance with this Act.

Public Records Act⁴

The California Public Records Act (“CPRA”), Government Code section 6250 et seq., provides public access to state and local government information. It is the other major “sunshine law” that ensures citizens have knowledge of the activities and workings of government. The policy supporting the CPRA is expressed by the legislative intent of the law as follows: “the Legislature...finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.” (Gov. Code § 6250)

The CPRA favors disclosure unless there is a specific reason not to, which is usually based on confidentiality and privacy considerations. These reasons, set forth as specific statutory exemptions, have been interpreted and evaluated by the courts over the years. Nondisclosure can also be justified if it can be established that the public interest in nondisclosure outweighs the public interest in disclosure. The state policy favoring disclosure was emphasized with the passage of Proposition 59, which states in part as follows: “A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access.”

If you have any questions or comments, please contact me at (916) 324-6197, Robin at (916) 323-1536, or Danielle at (916) 327-3129. This matter is being agendized for information only at the March 13, 2018, General Meeting.

⁴ There is one substantive change to this summary from the one provided in 2017. Section 6254.3 was amended to state that personal email addresses are not deemed public records and not subject to disclosure unless the email was used by the employee to conduct public business, as discussed in *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, or the email is necessary to identify a person in an otherwise discloseable communication. Non-substantive changes were made to Sections 6253.2, 6253.5, 6254 and 6276.12. Section 6254.4.5 was also added and is related to exemptions for recordings created during commission or investigation of sexual assault, domestic violence, child abuse and related crimes and is not pertinent to the Board's duties. Section 6253.2 was changed to add personal email addresses of persons paid by the state to provide in-home supportive services be made available to an exclusive bargaining agent. Section 6253.5 was amended in regard to inspection of election petitions and the time and manner in which county election officials shall retain documents. Section 6254 was amended to add the exemption of certain records of local agencies. Section 6276.12 added court files relating to intention filming of another without his or her consent as documents exempt from disclosure.

In addition, the case of *County of Los Angeles Bd. of Supervisors v. Superior Court* 12 Cal.App.5th 1264 (2017) clarified billing entries on invoices sent between a government agency and its attorney are within the scope of the attorney-client privilege and are not subject to disclosure. (See para. 4, page 6 of the summary)